COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

BLACKSTONE GAS COMPANY	)	**D.T.E. 01-50**

REPLY BRIEF OF THE ATTORNEY GENERAL

Respectfully submitted,

TOM REILLY
ATTORNEY GENERAL

By: Wilner Borgella, Jr.
Assistant Attorney General
Utilities Division
Public Protection Bureau
200 Portland Street
Boston, MA 02114
(617) 727-2200

October 9, 2001

TABLE OF CONTENTS

Page

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

BLACKSTONE GAS COMPANY	)	**D.T.E. 01-50**

REPLY BRIEF OF THE ATTORNEY GENERAL

I. INTRODUCTION

Pursuant to the briefing schedule established by the Department of Telecommunications and Energy ("Department") in this proceeding, the Attorney General submits his Reply Brief in response to the Initial Brief ("Brief") of Blackstone Gas Company ("Blackstone" or the Company"). The Attorney General files this Reply Brief for the limited purpose of responding to certain positions taken in the Initial Brief filed by Blackstone. This Reply Brief is not intended to respond to every argument made or position taken by the Company. Rather, it is intended to respond only to the extent necessary to assist the Department of Telecommunications and Energy ("Department") in its deliberations, *i.e.,* to provide further information, to correct misstatements or misinterpretations, or to provide omitted context. Therefore, silence in regard to any particular argument, assertions of fact, or statement of position in the Company's Initial Brief should not be interpreted, construed, or treated as assent, acquiescence, or agreement with such argument, assertion, or position.

In the Company's Brief, Blackstone has adopted, or is otherwise unopposed to, several of the Attorney General's arguments and/or recommendations. As to those other arguments and/or recommendations with which Blackstone takes issue, Blackstone's contentions are not supported by

the record. Accordingly, the Attorney General reaffirms his position that the Department should reject the Company's proposed new rates and tariffs, or in the alternative, adopt all of the Attorney General's pro forma adjustments. The Attorney General requests that the Department award the Company no more than a $39,952 rate increase.

II. ARGUMENT

A. BLACKSTONE'S DUE PROCESS RIGHTS HAVE NOT BEEN INFRINGED

Blackstone contends that its due process rights have been violated because, it alleges, several arguments raised by the Attorney General were never previously raised during the proceedings and Blackstone accordingly has had insufficient notice that certain of its costs or expenses were at issue. Co.Br., p.2 Blackstone's contention is frivolous–this entire proceeding has revolved around the Company's assets and liabilities and the costs and expenses associated with them. It is well settled that "the filing of a general rate case places a company on notice that every element of the rate request is at issue." *Boston Gas Company*, D.P.U. 96-50-C (Phase I), p. 46 (1997) *citing Bay State Gas Company*, D.P.U. 1535-A at 17 (1983). The Company's due process rights, therefore, have not been infringed. [1]

B. REVENUE REQUIREMENT

1. THE COMPANY FAILS TO DEMONSTRATE THAT IT BILLED ACCURATELY FOR THE VOLUMES OF GAS SOLD TO CUSTOMERS

The Attorney General demonstrated in his Initial Brief, and Blackstone has agreed, that the

[1] Blackstone also urges the Department to allow its Motion to Supplement the Record with a purported Affidavit of James Wojcik. Co.Br., p.2. The Attorney General has addressed Blackstone's Motion at length in his response filed with this Reply Brief. The Department should deny Blackstone's Motion since the extra-record statements contained in the purported Affidavit are not extraordinary, new, nor previously unknown information which was unavailable prior to the close of the record.

Company has been systemically billing its customers for gas in quantities greater than it was being billed for by the pipeline for over the last four years. AG Br., pp. 4-6 and Co. Br., p. 2. As a result, the Attorney General recommended delaying the starting date of any base rate increase, as the Department has done in other cases, where the books and records of the Company need to be corrected. The Attorney General also recommended that the increase should be delayed until the Company installed its own meter on its side of the Citygate and established that it was not over-billing for those volumes. *See Fryer v. Department of Public Utilities*, 374 Mass. 685, 691 (1978) (unreliability of utility records supports ruling that company books and records did not permit the establishment of new rates).

The Company argues in response that there is no proof that the meters are inaccurate and suggests that, since the Department has not received any complaints from customers, the billing must be accurate.[2] However, neither of these arguments establish that the Company's customer billings and records are accurate. If the Company thinks that the pipeline company's meter is measuring inaccurately, it should make all efforts to determine exactly what that amount is by installing its own meter on its side of the Citygate. Furthermore, the Company's argument that its billing is correct given that no one has complained is illogical, since the customer has no other basis to judge their usage other than to rely on the Company's meter and billings.

The Department, therefore, should delay implementation of any base rate increase until the

[2] The Company also argues that one bill from the pipeline that appears to indicate that the Company was being over-billed by the pipeline would actually show that the Company was underbilling customers. Co. Br., p.3. This argument misses the systemic problem that needs to be corrected. That is, although it might be true that in any given short-term period, the Company may sell less or more gas than it receives from the pipeline, over extended periods, the Company should receive greater volumes of gas from the pipeline than it bills customers for, with the difference, or unaccounted for gas, being at as much as three percent of sendout. Tr. 1, pp. 63-64.

Company proves the accuracy of the Company's sendout and meters.

C. THE COMPANY'S POST-TEST YEAR PLANT ADDITIONS SHOULD BE REJECTED

The Company originally proposed to make four separate adjustments to its rate base for post-test year plant additions of: (1) an International dump truck; (2) a Chevrolet Express truck; (3) computer software; and (3) tools and other shop equipment. Exh. B-1, exhibit 2, schedule 4. The Company then, in its brief, changed its position regarding the computer software and the tools and other shop equipment and appears to have withdrawn its request for those two post test-year additions to rate base. Co. Br., p. 7. However, it still proposes the inclusion of the two trucks, arguing that they are significant capital additions. *Id.*, pp. 5-6.

None of the Company's proposed post-test year additions to rate base meet the Department's requirements to be included in the rate base. Although some of the numbers have changed as a result of the Company's supplements and corrections to the record, the fact is that each of the capital additions is a small, routine investment in plant.[3] The Chevrolet Express truck represents only 2.34 percent of rate base. [$29,249 / $1,251,249]. Tr. 1, p. 33 and Exh. B-4. The computer software additions represents only 0.68 percent of rate base. [$8,500 / $1,251,249]. Tr. 1, p. 33-34 and Exh. B-4. The tools and other shop equipment only represent 0.90 percent of rate base. [$11,200 / $1,251,249]. Tr. 1, p. 34 and Exh. B-4. Finally, since the President uses the truck, and 32.9 percent of his costs should be allocated to the Sales and Services affiliate, only 32.9 percent of the

[3] The Department should review each addition separately, since each is made independently. These investments are not like adding a new nuclear power plant at an electric company or a new water treatment plant at a water company where the investment is a significant capital investment for the Company and significant in relation to the Company's rate base. *See Assabet Water Company*, D.P.U. 95-92, pp. 4-7 (1996).

truck should be considered in making any analysis of the addition to rate base. *See* AG Br. pp. 16-17 and Discussion, *infra*. This allocation reduces the utility portion of the International Truck addition that the Company is seeking to add from $61,469 to $41,246 [$61,469 x (1 - 0.329)]. This allocated plant addition associated with his truck therefore is only 3.3 percent of year end rate base. [$41,246 / $1,251,249].

Clearly, each of the post test-year plant additions is simply a routine incremental addition to plant in service. Since none of these plant additions are significant in relation to the Company's rate base, the Department should reject these additions and reduce the Company's proposed cost of service accordingly. *Nantucket Electric Company,* D.P.U. 91-106/138, pp. 90-91 (1991); *Western Massachusetts Electric Company*, D.P.U. 1300, pp. 14 -18 (1983).

D. EXPENSES

1. THE COMPANY'S PROPOSED UNCOLLECTIBLE DEBT EXPENSE ADJUSTMENT DOES NOT COMPLY WITH DEPARTMENT PRECEDENT

The Company proposes to determine its pro forma bad debt or uncollectibles expense amount based on the percent of write-offs to revenues for the short period of 13 months, including the test year. Tr. 1, p. 44. The Attorney General argued in his brief that the Department should continue to use its long standing precedent that determines the amount of uncollectibles by averaging the most recent three years' net writeoffs and applying the average to determine the percentage of [weather] adjusted test-year revenues it represents, i.e. the uncollectible ratio. AG Br., pp. 12-14 *citing Fitchburg Gas & Electric Light Company*, D.T.E. 98-51, pp. 49-51 (1998); *Boston Gas Company 96-50 (Phase I)*, pp. 70-71 (1996); *Commonwealth Electric Company*, D.P.U. 89-114/90-331/91-80, pp. 137-140 (1991). The Company now argues that the Department should use six years (rather than

13 months) of bad debt expense (as opposed to net write-offs) to determine the pro forma uncollectibles expense. Co. Br., pp. 7-8.

The Department should reject this new proposal. First, the new proposal violates the Department's long-standing precedent. *Id.* Second, the figures cited in the Company's Brief as evidence are all booked bad debt expense amounts and not net writeoff amounts. Co.Br., pp. 7-8. Finally, the Department has found using a three-year average (rather than some longer or shorter period) "provides a more accurate representation of the level of uncollectible expense which the Company is likely to experience in the future." *Western Massachusetts Electric Company*, D.P.U. 85-270, p. 180 (1986), *citing Boston Edison Company*, D.P.U. 1720 (1985). Therefore, the Department should reject the Company's proposal in this case and, consistent with its precedent, allow the Company to include pro forma bad debt expense based on averaging the most recent three years' net writeoffs and applying the average to determine the percentage of [weather] adjusted test-year revenues it represents or 0.783 percent of the Company's normalized revenue. AG Br., pp. 13-14.

2. THE COMPANY'S PRO FORMA LIABILITY INSURANCE EXPENSE INCREASE SHOULD BE ALLOCATED TO THE COMPANY'S AFFILIATE

The Company proposes to increase its test year cost of service by $5,886, from $20,544 to $26,430, to reflect increases in its general liability insurance costs. Exh. B-2, Schedule 3 and Exh. AG-3-12. However, the Company failed to assign or allocate any part of this cost to its affiliate, Blackstone Sales and Service. The Attorney General proposed that the Department reduce the pro forma liability insurance expense included in the cost of service by 32.9% or $8,804 ($26,430) based on the general allocator used by the Company to allocate common costs. *See* AG Br., p. 16, and Tr.

1, p. 75; *see also Berkshire Gas Company*, D.P.U. 92-210, p. 5 (1993).

The Company now argues that since the gas distribution business could only get insurance for itself on a stand alone basis at a higher cost than the propane business could, then the total Company insurance bill, including that associated with the propane business, should be the responsibility of the gas distribution business. Co. Br., p. 10. The Department should reject the Company's request. As the record in this case demonstrated, the liabilities coverages provided under this policy provide for insurance which cover the following exposures:

Appliance Stores Household	$42,116
Gas Dealers – LPG	$400,000
Gas Companies – natural gas – local distribution including products / completed ops	$111,238
Heating or Combined Heating & Air Conditioning Systems or Equipment – Dealers or Distributors & Installation, Service or Repair	$10,000
	$563,354

Exh. AG-2-11, p. 2

Clearly, the vast majority of the liability coverage is associated with the Services and Sales affiliate, with only 20 % ($111,238 of the total amount of $563,354) of the insured exposure associated with the gas distribution company. The record establishes that most of the liability coverage is associated with the bottled propane and appliance businesses, and therefore, the majority of the liability insurance should be allocated to the affiliate. Thus, the Attorney General's proposed allocation in this case of only 32.9 percent to the affiliate is a conservatively low estimate of the appropriate

amount attributable to the Services and Sales affiliate and should be adopted by the Department.

3. THE COMPANY FAILED TO ALLOCATE ANY OF THE OFFICERS' SALARIES AND BENEFITS TO THE COMPANY'S AFFILIATE

The Company proposes to recover all of the costs of the corporate officers through its gas service base rates. None of the salaries or benefits of the officers have been allocated to the Company's affiliate--Blackstone Sales and Service– even though that business is half as large as the gas distribution business. Exh. AG-3-6.[4] The Attorney General recommended that the Department order the Company to reduce its pro forma cost of service by $36,646 to remove that portion of officers' compensation appropriately allocatable to its affiliate. AG Br., pp. 16-17 *citing Berkshire Gas Company*, D.P.U. 92-210, p. 5 (1993). The Company responded with a proposed supplemental exhibit purporting to show that the affiliate already paid the President $150 per week and that the Clerk of the Corporation did no work for the affiliate. Co. Br., pp. 11-12. However, the evidence in the record in this case directly contradicts this unsworn statement.

Exhibit AG-1-69 provides the Year 2000 U.S. Corporation Tax Return for Blackstone Gas Company which is filed in consolidated form with both the gas distribution company and its affiliate Sales and Services Corporation. Tr. 1, p. 58. The "Compensation of officers" shown on page 1, line 12 is $76,113. This amount is also shown on page 2, Schedule E, line 1, indicating the "Amount of Compensation" for James A. Wojcik of $76,113. Therefore, for purposes of reporting to the I.R.S., the total compensation that Mr. Wojcik receives from the combined operations of the utility and its affiliate is $76,113.

Exhibit AG-1-24 asks the Company to itemize and quantify the Company's management and

[4] The gas distribution company revenues were $1,130,784 during the test year and the Sales and Service Division revenues were $574,629. Exh. AG-3-4, p. 6 and p. 2 respectively.

officer compensation. The Company's responded that the president of the company receives $76,113–there is no mention of allocation or assignment of that compensation to the affiliate.

Furthermore, the Company's year 2000 Annual Return to the Department (at page 4, the Principal and Salaried Officers' Annual Salaries [a copy of this page has been appended to the Motion]) shows that the President, James A. Wojcik's salary is $76,113, the same as in the tax form for the combined companies and the same as the response in Exhibit AG-1-24. The Annual Return shows that the Clerk of the Company, Grace Wojcik, has an Annual Salary of $25,015. It should also be noted that the Company's witness also made clear that the salaries of the its affiliate were not included in the reporting the amounts in the year 2000 Annual Return to the Department. *See* Tr. 1, pp. 58-59.

Finally, when asked about the allocation of costs from the utility to the affiliate, the Company responded that no salaries and wage costs were allocated. It clearly indicated that there were only two full time employees at the affiliate. Exh. AG-3-6. The two employees are an office employee, Melissa, with a salary of $20,243 and an outside service employee, Larry, with a salary of $30,403. Id. These are the ***only*** two salaries reported on the affiliate's income statements. *See* Exh. AG-3-4, page 3, the **Sales and Services Division, Operating Expenses, for the Years Ended December 31, 2000** which indicates Office Salaries of $20,243 and Service and Maintenance Salaries of $30,403.

The Company provided all of the above information under sworn testimony and did not amend, correct, or change any of it on the record. The Company's current argument, then, must mean that: (1) it filed an inaccurate Federal Tax return, (2) it filed inaccurate Annual Returns with the Department, and (3) the sworn testimony of its witnesses is wrong. The Department should

reject the Company's last minute attempt to confuse the record in this case. It should instead should order the Company to reduce its pro forma cost of service by $36,646 to remove that portion of officers compensation appropriately allocatable to its affiliate. AG Br., pp. 16-17.

4. DEPARTMENT PRECEDENT DOES NOT PERMIT EITHER THE DEFERRAL OF ADDITIONAL LOW INCOME DISCOUNTS OR THE RECOVERY OF DISCOUNTS THROUGH THE LDAC

The Company currently has no low income rates in place; it relied on the experience of North Attleboro Gas Company to determine the level participation that could be expected its proposed low income rates would generate. North Attleboro had a 5% low income participation level. When this participation level was applied to the Company's proposed rates, it generated the $4,000 low income discount adjustment. Claiming that there was a risk that the Company's actual experience may produce more than a 5% participation level and thereby a higher discount cost, the Company seeks permission to defer any undercollection and recover it in its next rate case. Exh. Blackstone-1, pp. 15-17. On brief, the Company confirms it is continuing to seek the Department's approval to recover any low income discount amount that exceeds the $4,000 and has expanded its request to include the option of recovery of this additional expense not only as part of the Company's next base rate case but has included the option of recovery through the Company's LDAC. Co.Br., pp. 15-16.

Department precedent is clear on what expenses may be recovered through rates-- annually recurring expenses; periodically recurring expenses; and extraordinary non-recurring expenses. *See Massachusetts Electric Company*, D.P.U. 95-40, p. 60 (1995) *citing* D.P.U. 92-250, at 102; D.P.U. 89-114/90-331/91-80, at 152; D.P.U. 1270/1414, at 32-33. Accordingly, only the recurring level of low income discounts would be allowable in the Company's next rate case and that level would be based on the Company's actual test year experience; therefore no deferral is required. Additionally,

regarding the Company's request for recovery of any additional discount through the LDAC, the Department has issued specific directives regarding the recovery of discounts through the LDAC. *See Fitchburg Gas and Electric Light Company*, DTE 98-51, pp. 148-149 (1998) (disallowing company request to recover the Farm Discount through the LDAC). Based on the foregoing, the Company's request to defer or collect through its LDAC any additional low income discounts should be denied.

III. CONCLUSION

WHEREFORE, for all of the foregoing reasons and those submitted in his Initial Brief, the Attorney General submits that the Department should reject the Company's proposed new rates and tariffs, or in the alternative, adopt the Attorney General's pro forma adjustments.

RESPECTFULLY SUBMITTED,

TOM REILLY
ATTORNEY GENERAL

By: Wilner Borgella, Jr.
Assistant Attorney General
Utilities Division
Public Protection Bureau
200 Portland Street
Boston, MA 02114
(617) 727-2200

Dated: October 9, 2001